

UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF MICHIGAN
NORTHERN DIVISION

RAMON JACKSON (#290867),

Plaintiff,

Case No. 2:10-cv-253

v.

HON. ROBERT HOLMES BELL

JEFF WOODS, KATHY OLSON, JEFF
HARWOOD, ROBERT NORTON,

DEFENDANTS.

/

**ORDER APPROVING AND ADOPTING
REPORT AND RECOMMENDATION**

On July 14, 2011, Magistrate Judge Timothy P. Greeley issued a Report and Recommendation (“R&R”) recommending that Defendants’ motion for summary judgment on Plaintiff’s original claims for equitable relief (Dkt. No. 34) be granted, and that Plaintiff’s motions to amend his complaint (Dkt. Nos. 11, 28) also be granted, enabling Plaintiff to pursue a claim for damages despite the fact that the injunctive relief sought in his original complaint is now moot. (Dkt. No. 41.) The Magistrate Judge also recommended that Plaintiff’s other pending motions (Dkt. Nos. 5, 6, 9, 10, 19, 27) be denied. This matter is before the Court on Defendants’ objection to the Magistrate Judge’s recommendation that Plaintiff be allowed to amend his complaint to include claims for damages. (Dkt. No. 43.)

Defendants’ sole objection to the R&R is that the Magistrate Judge ignored arguments raised in Defendants’ reply brief to Plaintiff’s response to Defendants’ motion for summary judgment, (Dkt. No. 39). In their reply brief, Defendants raised for the first time substantive

arguments against Plaintiff's proposed claim for damages, even though Plaintiff's motions to amend his complaint had not yet been considered and Defendant's initial brief in support of summary judgment only addressed the equitable relief sought in Plaintiff's original complaint. Defendants maintain that the substantive arguments against Plaintiff's proposed claims for damages raised in their reply brief and in their objections to the R&R establish that Plaintiff cannot assert an Eighth Amendment claim for monetary damages and that Defendants' motion for summary judgment should be granted "in its entirety thereby dismissing Plaintiff's claim." (Dkt. No. 43 at 9.)

The Court finds that the Magistrate Judge's recommendation is correct. It would be inappropriate to grant summary judgment on a proposed claim that has not yet been added to Plaintiff's complaint. Defendants are jumping the gun. Once this Court accepts the Magistrate Judge's recommendation to grant Plaintiff's motions to file an amended complaint, the proper course is for Defendant to file an answer, motion to dismiss, or renewed motion for summary judgment in response to Plaintiff's new claims for monetary damages. Defendants may believe that Plaintiff's case is unsupportable, but Defendants arguments are haphazardly presented and were raised for the first time in their reply brief. Plaintiff has had no opportunity to adequately respond. The Magistrate Judge's recommendation to grant Defendant's motion for summary judgment insofar as it pertains to the claims raised in Plaintiff's original complaint while granting Plaintiff's pending motions to amend his complaint is proper and in the spirit of Fed. R. Civ. P. 15(a)(2). The

The Magistrate Judge's recommendations with respect to Plaintiff's other pending motions are also sound. Accordingly,

IT IS HEREBY ORDERED that the July 14, 2011, R&R (Dkt. No. 41) is **APPROVED** and **ADOPTED** as the opinion of the Court.

IT IS FURTHER ORDERED that Plaintiff's motions to amend his complaint (Dkt. Nos. 11, 28) are **GRANTED**.

IT IS FURTHER ORDERED that Defendants' motion for summary judgment (Dkt. No. 34) is **GRANTED** with respect to the claims for equitable relief contained in Plaintiff's original complaint.

IT IS FURTHER ORDERED that Plaintiffs other pending motions (Dkt. No. 5, 6, 9, 10, 19, 27) are **DENIED**.

Dated: August 29, 2011

/s/ Robert Holmes Bell
ROBERT HOLMES BELL
UNITED STATES DISTRICT JUDGE